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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,459

10/15/2003

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EXAMINER

PHAM, LUU T

ART UNIT

PAPER NUMBER

2437

MAIL DATE

DELIVERY MODE

05/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/687,459	Applicant(s) DE JONG, EDUARD K.	
	Examiner LUU PHAM	Art Unit 2437	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 10-18, 28-36 and 72-88.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Emmanuel L. Moise/
 Supervisory Patent Examiner, Art Unit 2437

/Luu Pham/
 Examiner, Art Unit 2437

Continuation of 11. does NOT place the application in condition for allowance because:

Applicants' arguments in the Remarks filed on 04/16/2010 have been fully considered but they are not persuasive.

Applicants' arguments:

1. "The Plain Meaning of the Claim has been Ignored."

a) "[T]he rejection must cite a teaching of a rights locker, identify the provider for that locker and then demonstrate that that particular provider authenticated the request that is determined in this operation. This was not done in the rejection and instead, the explicit recitation was reduced to just downloading something from some location that provides some rights management."

b) "The rejection has failed to cite any teaching of sending two items as recited in this portion of the claim to an entity that authenticated the access request in the first portion of the claim."

c) "[T]he rejection must show that the party that authenticated the original access request sends to the user device a new access request and a Web page. A showing of a Web page in general is not sufficient."

2. "The Rejection Failed To Meet the Anticipation Standard."

a) "Nowhere in the cited sections is an authenticated access request mentioned and so the reference cannot teach the specific authenticated access request recited in these claims. Specifically, Applicants electronically searched the text version of Bushe available on the USPTO website for 'authen' and there were no hits. The rejection cited a Rights Locker Component 104, but failed to cite any teaching that a provider for a rights locker provided an authenticated request."

b) "[T]he rejection failed to cite any teaching that the catalog was associated with an authenticated access request as required in these claims."

c) "[T]he rejection does not cite to anything determined in the first operation, which are the elements sent in this portion of the claim and instead cites to a completely different operations in Bushe. The rejection completely ignores the express relationship between the first and second portions of the claim and the elements recited in those portions."

d) "[T]he rejection failed to cite a new authenticated rights locker access request and also failed to cite any teaching that the link in the Web page has any associated authenticated rights."

The Examiner disagrees due to the following reasons:

Per 1. "The Plain Meaning of the Claim has been Ignored."

a) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a rights locker, identify the provider for that locker and then demonstrate that that particular provider authenticated the request that is determined in this operation.") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In fact, Buhse does disclose determining, on a user device, a digital content specification and associated authenticated rights locker access request wherein said associated authenticated rights locker access request was authenticated by a right locker provider for the rights locker (pars. 0029-0030, 0042, and 0065-0066; Figs. 1 and 2C; step 1 and steps 4a: 'select content'; the Offer Catalog Component 102 accessible by customers, provides customers with a listing of the digital products available from each client; in response to the client or prescriptions directions, the Right Locker Component 104 issued purchased products to the customer; the consumer logs in using the promotion ID; see also pars. 0064-0072); and sending, from said user device to said rights locker provider for the rights locker, said authenticated rights locker access request and said digital content specification (pars. 0029-0033, 0066, 0156-0159, and 0166; Figs. 1 and 2C; step 4a: 'select content'; the consumer selects the products to be downloaded and submits the request for content; the Rights Locker Component (RLC) 104 maintains a Rights Database, which contains rights information for each consumer; see also pars. 0064-0072, 0102-0110, and 0124-0135); Each client/consumer has a list of available digital products; the consumer receives purchased products from the Right Locker Component; and is able to log in using the promotion ID sent by the Right Locker Component to purchase digital product associated with given promotion ID. It is clear that Bushe encompasses all limitations in argued above.

b) Bushe does disclose sending two items as recited in this portion of the claim to an entity that authenticated the access request in the first portion of the claim; first sending is to submit a request for content; e.g., sending, from said user device to said rights locker provider for the rights locker, said authenticated rights locker access request and said digital content specification (pars. 0029-0033, 0066, 0156-0159, and 0166; Figs. 1 and 2C; step 4a: 'select content'; the consumer selects the products to be downloaded and submits the request for content; the Rights Locker Component (RLC) 104 maintains a Rights Database, which contains rights information for each consumer; see also pars. 0064-0072, 0102-0110, and 0124-0135; [consumer submits a request for content or sending login request with given promotion ID]); and second sending is to submit a request to download software needed to play downloaded content; e.g., sending, from said user device, said new authenticated rights locker access request and an indication of the right associated with said one of said

one or more clickable links to said rights locker provider (pars. 0055-0063, 0068, and 0185-0190; Figs. 2C and 7C; step 6b: 'SW downloaded'; the Consumer visits a retail website or a Rights Locker website to view the subscription plan (playlist) and selects tracks to download; the result returned is either in the form of links to retrieve the content, or proprietary order blocks; see also pars. 0106, 0155-0157, and 0165-0166; the consumer determines which rights to transfer to other devices);

c) Bushe does disclose the party that authenticated the original access request sends to the user device a new access request and a Web page (pars. 0029-0030, 0042, and 0065-0066; Figs. 1 and 2C; step 1 and steps 4a: 'select content'; the consumer logs in using the promotion ID; and then pars. 0055-0063, 0068, and 0185-0190; Figs. 2C and 7C; step 6b: 'SW downloaded'). As described in paragraphs [0185]-[0190], after authenticating the user and determining that the user/account holder is authorized to have the requested content, the user will receive result returned in the form of links [i.e., a Web page includes links] to retrieve the content.

Per 2. "The Rejection Failed To Meet the Anticipation Standard."

a) It would be improper to conclude that "[n]owhere in the cited sections is an authenticated access request mentioned and so the reference cannot teach the specific authenticated access request recited in these claims" just because of there were no hits after having electronically searched the text version of Bushe reference. The Examiner respectfully submits that Bushe does teach the specific authenticated access request as claimed by the Applicants (par. 0065; the consumer logs in user the promotion ID; [meaning the system will authenticate user using promotion ID]; pars. 0135 and 0185-0190; after authenticating the user and determining that the user/account holder is authorized to have the requested content, the user will receive result returned in the form of links).

b) Bushe does teach the catalog was associated with an authenticated access request (pars. 0029-0030, 0042, and 0065-0066; Figs. 1 and 2C; step 1 and steps 4a: 'select content'; the Offer Catalog Component 102 accessible by customers, provides customers with a listing of the digital products available from each client; in response to the client or prescriptions directions, the Right Locker Component 104 issued purchased products to the customer; the consumer logs in using the promotion ID).

c) As discussed in section 1.b above, the Examiner respectfully submits that Bushe does disclose sending two items as recited in this portion of the claim to an entity that authenticated the access request in the first portion of the claim; first sending is to submit a request for content; e.g., sending, from said user device to said rights locker provider for the rights locker, said authenticated rights locker access request and said digital content specification (pars. 0029-0033, 0066, 0156-0159, and 0166; Figs. 1 and 2C; step 4a: 'select content'; see also pars. 0064-0072, 0102-0110, and 0124-0135; [consumer submits a request for content or sending login request with given promotion ID]); and second sending is to submit a request to download software needed to play downloaded content; e.g., sending, from said user device, said new authenticated rights locker access request and an indication of the right associated with said one of said one or more clickable links to said rights locker provider (pars. 0055-0063, 0068, and 0185-0190; Figs. 2C and 7C; step 6b: 'SW downloaded'; the Consumer visits a retail website or a Rights Locker website to view the subscription plan (playlist) and selects tracks to download; the result returned is either in the form of links to retrieve the content, or proprietary order blocks; see also pars. 0106, 0155-0157, and 0165-0166; the consumer determines which rights to transfer to other devices).

d) As discussed in section 1.c above, the Examiner respectfully submits that Bushe does disclose a new authenticated rights locker access request and also the link in the Web page has associated authenticated rights (pars. 0029-0030, 0042, and 0065-0066; Figs. 1 and 2C; step 1 and steps 4a: 'select content'; the consumer logs in using the promotion ID; and then pars. 0055-0063, 0068, and 0185-0190; Figs. 2C and 7C; step 6b: 'SW downloaded'). As described in paragraphs [0185]-[0190], after authenticating the user and determining that the user/account holder is authorized to have the requested content, the user will receive result returned in the form of links [i.e., a Web page includes links] to retrieve the content.